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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/083,488

02/27/2002

Tetsushi Kobayashi

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05/24/2006

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EXAMINER

ALLEN, WILLIAM J

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/083,488

Applicant(s)

KOBAYASHI ET AL.

Examiner

William J. Allen

Art Unit

3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: The Final rejection mailed 1/12/2006 has been maintained (Note see below: Reg. Section 7).

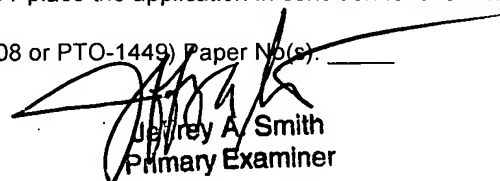
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Below: Reg. Section 11.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s): _____.
13. ☐ Other: _____.


Jeffrey A. Smith
Primary Examiner

Reg. Section 7: The Examiner notes that the claim set filed 4/21/2006 mirrors the claim set filed 11/14/2005. The 4/21/06 claim set is merely a clean version of the previous claim set and indicates no new amendments. Thereby, the claim set filed 4/21/06 has been recommended for entry to promote prosecution.

Reg. Section 11: Applicant contests that since the shopper is left to discover that the merchandise is lacking in Pugliese, the system and method of Pugliese does not show "managing information regarding non-available products in each store, the non-available product being a product that is out of stock". The Examiner notes that in paragraph [0130], Pugliese includes a "Merchant Data Domain" in which is contained "all merchant relative data required by the ShopLive system". Additionally, those data sets contain merchant catalog information and individual store inventory information (i.e. whether items are in or out of stock). Furthermore, Pugliese states referring shoppers to other member merchants that carry the out of stock merchandise (see at least: [0042]). Pugliese thereby facilitates "managing information regarding non-available products in each store, the non-available product being a product that is out of stock".

Additionally, Applicant contests that Pugliese does not show "when a purchaser selects a non-available product from the product catalog of one store, introducing the purchaser to another store in which the product selected by the purchaser is available". The Examiner directs Applicant to paragraphs [0009], [0010], [0017], [0042], and [0043]. Pugliese clearly shows referring a shopper to another member merchant that has a non-available product available for sale. Additionally, paragraphs [0009] and [0010] show a shopper accessing the ShopLive system from a user portal/terminal, thereby not restricting the user to walk-in shopping.

The Examiner additionally cites paragraphs 0063, 0101, 0157 Fig. 16 in which Pugliese shows managing inventory and in store availability.